

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT VICKERY,

Plaintiff,

vs.

Case No. 07-CV-13419
HON. GEORGE CARAM STEEH

PATRICIA CARUSO, et al.,

Defendants.

/

ORDER ACCEPTING JANUARY 20, 2009 REPORT AND RECOMMENDATION (#73)
DENYING DEFENDANT CARUSO'S MOTION TO DISMISS (# 49) AS MOOT
AND DISMISSING CARUSO FROM THIS LAWSUIT

Plaintiff Robert Vickery, a Michigan prisoner appearing pro se, alleges claims of deliberate indifference to serious medical needs following a December 1, 2006 motor vehicle accident. The accident occurred while Vickery was in custody. On July 29, 2008, defendant Michigan Department of Corrections Director Patricia Caruso filed a motion to dismiss. The motion was referred to Magistrate Judge Michael Hluchaniuk. Magistrate Judge Hluchaniuk issued a January 20, 2009 Report and Recommendation recommending that Caruso's motion to dismiss be denied as moot, and that Caruso be dismissed from this lawsuit, due to a superceding amended complaint filed by Vickery that contains no allegations against Caruso, and Vickery's response to the motion to dismiss agreeing that Caruso should be dismissed from this lawsuit.

"A judge of the court shall make a de novo determination of those portions of [a] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636 (b)(1). Objections must be filed within 10 days after service of a Report and Recommendation. 28 U.S.C. § 636 (b)(1)(C). "A judge of the court may accept, reject, or

modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id. A party's failure to object waives further judicial review. Thomas v. Arn, 474 U.S. 140, 149-155 (1985); Thomas v. Halter, 131 F.Supp.2d 942, 944 (E.D. Mich. 2001); 28 U.S.C. § 636(b)(1). Vickery has not filed timely objections. Accordingly,

The court hereby ACCEPTS the January 20, 2009 Report and Recommendation as its own. Defendant Caruso's motion to dismiss is hereby DENIED as MOOT. Defendant Caruso is hereby DISMISSED from this lawsuit as a party-defendant.

SO ORDERED.

Dated: February 12, 2009

s/George Caram Steeh

GEORGE CARAM STEEH

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on February 12, 2009, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk